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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re Groupon Marketing and Sales Practices Litigation

No. 3:11-md-02238-DMS-RBB

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
JOINT MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

JUDGE: The Hon. Dana M. Sabraw
CTRM: 13A
DATE: October 9, 2015
TIME: 1:30 p.m.

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1 Plaintiffs Barrie Arliss, Nevin Booth, Julie Buckley, Ashley Christensen, Jason
 2 Cohen, Adam Dremak, William Eidenmuller, Anthony Ferreira, Sarah Gosling, Eli R.
 3 Johnson, Heather Kimel, Jeff Lawrie, Michael McPherson, Sarah Mehel, Nicholas
 4 Spencer, Eric Terrell, Carlos Vazquez, and Brian Zard (“Plaintiffs”), on the one hand,
 5 and Groupon, Inc. (“Groupon”) and the Merchant Defendants¹ (“Defendants”), on the
 6 other (collectively the “Parties”), respectfully submit this memorandum in support of
 7 their joint motion for an order granting preliminary approval to the Parties’ Stipulation
 8 of Class Action Settlement and exhibits thereto (“Settlement Agreement”) in these
 9 consolidated cases (the “Actions”).

10 **I. INTRODUCTION**

11 After the Ninth Circuit Court of Appeals issued its February 19, 2015
 12 Memorandum opinion (“2015 Ninth Circuit Ruling” or “2015 Ruling”) (Dkt. No. 63-
 13 1) vacating this Court’s approval of the 2012 Proposed Settlement Agreement, and its
 14 subsequent denial of Plaintiffs’ petition for rehearing, the Parties entered into renewed
 15 settlement discussions in light of the 2015 Ninth Circuit’s Ruling and cognizant of the
 16 passage of time since the 2012 Proposed Settlement Agreement.² After months of
 17 intense, arm’s-length negotiations, the Parties have now executed a new Settlement
 18 Agreement, which provides \$8.5 million worth of economic relief and benefit to the
 19 Class, and does so in accordance with the Ninth Circuit’s directives.

20 Under the Settlement Agreement, the value of the settlement remains
 21 \$8.5 million. But this Settlement is more streamlined and provides prompt relief to
 22 Settlement Class Members who will no longer be required to go back to the Merchant
 23

24 ¹ “Merchant Defendants” means the Persons named as Defendants in any of the
 25 Actions listed on Exhibit 1 to the Settlement Agreement, other than Groupon,
 26 including Nordstrom Inc., Full Circle Farms, Inc., The Gap, Inc., Spa Blix, Inc.,
 27 Whirly West Inc. d/b/a WhirlyBall, Fun Time, LLC d/b/a/ Wheel Fun Rentals, and
 28 YMCA of Metropolitan Washington.

29 ² All capitalized terms used herein have the same meanings as in the Settlement
 30 Agreement, dated as of September 11, 2015, filed concurrently herewith as Exhibit
 31 to the Declaration of John J. Stoia, Jr. (“Stoia Decl.”).

1 to try to redeem a specific Voucher, as was required under the 2012 Proposed
 2 Settlement Agreement. Instead, Settlement Class Members with valid claims will
 3 now receive “Groupon Credits” deposited directly in their accounts, which can be
 4 used to purchase the vast majority of offerings on groupon.com. Each Groupon
 5 Credit is equivalent to \$1.00 in buying power for Groupon offerings on Groupon’s
 6 website.

7 Importantly, Settlement Class Members will receive Credits equal to **130%** of
 8 the purchase price of their unredeemed, unrefunded Groupon Vouchers, subject to any
 9 adjustment depending on the total amount of claims. In other words, for every \$1.00
 10 that a Class Member paid for a Groupon Voucher, they will potentially receive \$1.30
 11 in Groupon Credits. This will allow Settlement Class Members to use their Groupon
 12 Credits to purchase a wide variety of offerings, without spending any additional
 13 money, or, if they choose, they may combine the Credits with their own credit and use
 14 them toward larger purchases.

15 Additionally, under the Settlement Agreement, the Parties have eliminated the
 16 “Second Settlement Fund,” the feature in the 2012 Proposed Settlement Agreement
 17 that gave rise to valuation questions in the 2015 Ninth Circuit Ruling. As such,
 18 Groupon will forego any right to seek reimbursement from the Settlement Amount for
 19 refunds it pays to Class Members. With the elimination of the Second Settlement
 20 Fund, the Court can readily make the requisite *Bluetooth* factual findings referenced
 21 in the 2015 Ninth Circuit Ruling. *See* Dkt. No. 63-1 at 5-6. And to facilitate those
 22 findings, the deadline for submitting new claims (claims from the 2012 Proposed
 23 Settlement Agreement need not be re-submitted) *precedes* the hearing for approval of
 24 the Settlement Agreement (the “Approval Hearing”). Accordingly, prior to the
 25 Approval Hearing, the Parties will provide the Court with the total number and value
 26 of claims to aid the Court’s determination of “the value of the relief to the class,” in
 27 accordance with the 2015 Ninth Circuit Ruling. *See id.* at 6.

28 At this stage, the Court need only “make a preliminary determination on the

1 fairness, reasonableness, and adequacy" of the settlement. *See* David F. Herr,
 2 *Annotated Manual for Complex Litigation*, §21.632 (4th ed. 2005). As detailed
 3 below, the Settlement Agreement is fair, reasonable, adequate, and in the best interests
 4 of the Settlement Class, such that notice of the Settlement Agreement should be
 5 provided to Settlement Class Members, and a hearing scheduled to consider approval
 6 of the settlement. The Parties, therefore, respectfully request that the Court enter an
 7 order: (1) conditionally certifying the Settlement Class; (2) granting preliminary
 8 approval of the Settlement Agreement; (3) approving the proposed notice program
 9 and directing that notice be disseminated to the Settlement Class; (4) appointing Rust
 10 Consulting, Inc. as the Claims Administrator; and (5) setting an Approval Hearing
 11 ("Preliminary Approval Order").

12 **II. FACTUAL AND PROCEDURAL BACKGROUND**

13 **A. Groupon's Services and Marketing**

14 Groupon operates online local commerce marketplaces throughout the world
 15 that connect merchants to consumers by offering goods and services at a discount.
 16 Groupon acts as a third party marketing agent by selling vouchers ("Groupons") that
 17 can be redeemed for products or services with a merchant. Declaration of Shirli F.
 18 Weiss, ¶3 ("Weiss Decl."), filed concurrently herewith. It also sells merchandise
 19 directly to customers in transactions for which it is the merchant of record. *Id.*
 20 Customers access Groupon's deal offerings directly through its websites, mobile
 21 platforms and emails and may also access its offerings indirectly using search engines.
 22 *Id.* Each day, Groupon provides consumers with a selection of promotional offers
 23 (known during the relevant time as "Daily Deals") from merchants across the United
 24 States. *Id.*, ¶4. Consumers purchase Groupon Vouchers, which can then be redeemed
 25 for the specified goods or services at the offering merchant, directly from Groupon's
 26 website. *Id.* For example, a typical Daily Deal during the relevant time might allow a
 27 consumer to pay \$20 to purchase a Groupon Voucher, which the consumer could then
 28 redeem for 200% of the purchase price paid, *i.e.*, for \$40 value in goods or services at

1 the specified merchant as specified in the terms of the offer for the promotional period
 2 displayed on the Voucher. *Id.*

3 Consumers sign-up online to request to receive daily emails from Groupon
 4 regarding the promotional offers available in desired geographical location(s) and
 5 categories selected by the consumer based on personal preference. *Id.*, ¶5.
 6 Consumers also access Groupon's promotional offers directly through Groupon's
 7 website and mobile applications. *Id.* In order to purchase any Groupon Voucher or
 8 subscribe to receive daily emails, a consumer must create a Groupon account and
 9 provide a valid email address. *Id.*, ¶6. In addition to its Daily Deal offerings,
 10 Groupon also maintains an online storefront, known as "Groupon Goods," from
 11 which consumers may shop and purchase a wide range of products and goods offered
 12 by Groupon and third-party merchants. *See id.*, ¶3.

13 Groupon believes that its business model has proved highly successful with
 14 consumers. Groupon has sold millions of Groupon Vouchers throughout the United
 15 States and overseas since the Company's inception in November 2008.

16 **B. The Litigation**

17 **1. Consolidated Proceedings and Illinois State Court
 18 Action**

19 The consolidated proceedings *In re Groupon Marketing and Sales Practices*
 20 *Litigation* include 17 federal actions, 15 of which are putative class actions.³ In

21
 22 ³ The 17 federal actions are: *Arliss v. Groupon, Inc.*, No. 3:11-cv-01374-DMS-
 23 RBB; *Booth v. Groupon, Inc.*, No. 3:11-cv-01320-DMS-RBB; *Christensen v.*
Groupon, Inc., No. 3:11-cv-01233-DMS-RBB; *Cohen v. Groupon, Inc.*, No. 3:11-
 24 cv-01245-DMS-RBB; *Eidenmuller v. Groupon, Inc.*, No. 3:11-cv-01244-DMS-
 25 RBB; *Ferreira v. Groupon, Inc.*, No. 3:11-cv-00132-DMS-RBB; *Gosling v.*
Groupon, Inc., No. 3:11-cv-01231-DMS-RBB; *Hinton v. Groupon, Inc.*, No. 3:11-
 26 cv-02674-DMS-RBB; *Johnson v. Groupon, Inc.*, No. 3:11-cv-02835-DMS-RBB;
Johnson v. Groupon, Inc., No. 3:11-cv-01279-DMS-RBB; *Kimel v. Groupon, Inc.*,
 27 No. 3:11-cv-01225-DMS-RBB; *McPherson v. Groupon, Inc.*, No. 3:11-cv-01551-
 28 DMS-RBB; *Mehel v. Groupon, Inc.*, No. 3:11-cv-01349-DMS-RBB; *Spencer v.*
The Gap, Inc., No. 3:12-cv-01210-DMS-RBB; *Terrell v. Groupon, Inc.*, No. 3:11-
 cv-01595-DMS-RBB; *Vazquez v. Groupon, Inc.*, No. 3:11-cv-01253-DMS-RBB;
 and *Zard v. Groupon, Inc.*, No. 3:11-cv-01232-DMS-RBB. Jennifer Bates
 voluntarily withdrew and dismissed her action entitled *Bates v. Groupon, Inc.*, No.

1 addition to the federal actions, a putative class action is pending in Illinois state court,
 2 styled, *Dremak v. Groupon, Inc.*, No. 11-CH-8076 (Kane Cnty. IL). *See* Weiss Decl.,
 3 ¶2; *see also* Exhibit 1 to Settlement Agreement.

4 Plaintiffs assert claims based on federal and state law arising out of
 5 Defendants' marketing and sale of Groupon Vouchers, alleging, *inter alia*, that the
 6 expiration dates stated on Groupon Vouchers violate the Electronic Funds Transfer
 7 Act ("EFTA"), as amended by the Credit Card Accountability Responsibility and
 8 Disclosure Act ("CARD Act"), 15 U.S.C. §1693, *et seq.*, and various state laws. *See*,
 9 *e.g.*, First Amended Complaint, *Ferreira v. Groupon, Inc.*, No. 3:11-cv-00132-DMS-
 10 POR, ¶10 ("Ferreira Complaint"). Specifically, Plaintiffs allege that the CARD Act
 11 prohibits the sale of gift certificates with expiration periods of less than five years,
 12 including offerings of Groupon Vouchers. *See* Ferreira Complaint, ¶50; 15 U.S.C.
 13 §1693, *et seq.* Plaintiffs contend that the inclusion of expiration dates on Groupon
 14 Vouchers also violates a number of state laws that apply to expiration dates of gift
 15 cards and gift certificates. *See* Ferreira Complaint, ¶¶61-64. Plaintiffs further contend
 16 that Groupon imposes other restrictions such as "Not valid for cash (unless required
 17 by law)," and "Must use gift certificate in one visit," on its Vouchers. *Id.*, ¶27.
 18 Plaintiffs contend that the above misconduct and other activities are illegal or not
 19 sufficiently disclosed, and that Groupon's Terms and Conditions and website are in
 20 various ways misleading or deceptive to consumers. *Id.*, ¶34. Plaintiffs seek
 21 damages, restitution, injunctive relief, and other remedies in the Actions. *Id.*, ¶10.

22 Defendants deny Plaintiffs' allegations and deny they are liable under any of
 23 the legal theories asserted by Plaintiffs. Defendants dispute that the CARD Act and
 24 the various state statutes at issue were intended to prohibit the expiration of Groupon
 25 Voucher's "promotional value" – the value in excess of the purchase price.
 26 Defendants contend that the Groupon Vouchers are not covered by the EFTA or are

27 1:11-cv-10556-DJC (D. Mass.), pursuant to Fed. R. Civ. P. 41(a)(1)A(i), on March
 28 21, 2012. *See* Dkt. No. 39.

1 encompassed within the EFTA's exception for promotional gift certificates, that
2 expiration of the Promotional Value of Groupon Vouchers is permitted under state
3 law, and that expiration of the value equivalent to the customer's purchase price value,
4 during the relevant time, and as disclosed to consumers in Groupon's Terms and
5 Conditions, expired in accordance with applicable laws of the jurisdiction in which
6 the Groupon was sold. Defendants further contend that all restrictions applicable to
7 Groupon Vouchers were adequately disclosed to consumers in Groupon's Terms and
8 Conditions, on the promotional offer relating to the Groupon Voucher, and/or on the
9 face of the Groupon Voucher, and that such terms were not misleading or deceptive.
10 As a threshold matter, Defendants contend that Plaintiffs have waived the right to
11 bring a class action and that all of Plaintiffs' claims are subject to mandatory
12 arbitration under Groupon's Terms and Conditions. *See CompuCredit Corp. v.*
13 *Greenwood*, __ U.S. __, 132 S. Ct. 665, 668-69 (2012) (citing *AT&T Mobility LLC v.*
14 *Concepcion*, __ U.S. __, 131 S. Ct. 1740 (2011) (upholding waiver of right to bring
15 class action in arbitration agreement)). Defendants also assert that any purported
16 damages for all class actions under EFTA are capped at \$500,000 and that none of the
17 criteria for applying statutory damages can be met. *See* 15 U.S.C. §1693m(a)(2)(B).

2. The 2012 Proposed Settlement Agreement and Subsequent Appellate Proceedings

20 In March 2012, after extensive, arm's-length settlement negotiations, including
21 multiple mediation sessions under the supervision of the Honorable Daniel Weinstein
22 (Ret.) of JAMS, the Parties reached the 2012 Proposed Settlement Agreement. The
23 2012 Proposed Settlement Agreement established a settlement fund of \$8,500,000, to
24 pay claims and from which claims administration expenses, attorneys' fees and costs,
25 incentive awards and monetary relief to the Class would be paid. Under the 2012
26 Proposed Settlement Agreement, before obtaining any entitlement to a refund, Class
27 Members were first required to submit claims for Settlement Vouchers that they could
28 then redeem for the goods and services with the specific Merchant Partner designated

1 on their original, expired Groupon Voucher. Only those Class Members who were
 2 unable to redeem their Settlement Vouchers at the original Merchant Partner were
 3 entitled to a cash refund from the settlement fund of: (1) the purchase amount if the
 4 Merchant Partner had gone out of business; or (2) the purchase amount plus an
 5 additional 20% of the promotional value of the original Groupon Voucher if the
 6 Merchant Partner refused to honor the Settlement Voucher. The 2012 Proposed
 7 Settlement Agreement further contemplated that, *if* funds remained after the foregoing
 8 payments were made, the Claims Administrator would send out a second class notice
 9 advising Class Members of a “Second Settlement Fund” that would be used to pay
 10 additional requests from Class Members for refunds based on their purchases of
 11 Groupon Vouchers after December 1, 2011. To get refunds to Settlement Class
 12 Members faster under the Second Settlement Fund, should that fund be created,
 13 Groupon agreed to pay such claims directly (or the Class Member could submit a
 14 claim to the Claims Administrator), and then it had the ability to seek reimbursement
 15 for approved refunds from the Second Settlement Fund, if any remained.

16 On April 24, 2012, the Court granted preliminary approval of the 2012
 17 Proposed Settlement Agreement and conditionally certified the Action as a class
 18 action pursuant to Rules 23(b)(3) and 23(c)(1). Following the Court’s entry of that
 19 order, the Settlement Class was given notice of the 2012 Proposed Settlement
 20 Agreement, and approximately 70,600 Settlement Class Members submitted claims in
 21 anticipation of the approval of the 2012 Proposed Settlement Agreement.

22 On September 12, 2012, the Court held a hearing to consider approval of the
 23 2012 Proposed Settlement Agreement, considering the arguments by the Parties and
 24 objectors. After the Parties submitted an amended settlement agreement that
 25 eliminated a *cy pres* provision from the settlement, the Court issued an order on
 26 December 12, 2012, approving the 2012 Proposed Settlement Agreement (Dkt. No.
 27 108), and entered Judgment (Dkt. No. 109) on December 18, 2012.

28 On January 17, 2013, objector Padraigin Browne filed a Notice of Appeal of

1 the Court's approval order.⁴ After considering the briefing and hearing argument
 2 from the Parties and Browne, the Ninth Circuit issued a Memorandum opinion
 3 vacating the judgment on February 19, 2015 (the "2015 Ninth Circuit Ruling"), and
 4 later denied a petition for rehearing on March 30, 2015. Groupon subsequently
 5 terminated the 2012 Proposed Settlement Agreement on June 22, 2015, pursuant to its
 6 terms.

7 In its 2015 Ruling, the Ninth Circuit stated that the Court did not make the
 8 factual findings in connection with the Second Settlement Fund required by *In re*
 9 *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 938 (9th Cir. 2011).
 10 Specifically, the Ninth Circuit found that the Court "made no findings as to: (1) the
 11 probable size, scope and impact of the Second Settlement Fund, to the extent such
 12 determinations are feasible; and (2) whether the benefits of the Second Settlement
 13 Fund were in any way duplicative of preexisting relief available to Class Members via
 14 Groupon's customer satisfaction policy, under which it conceded that it paid refunds
 15 to customers." Dkt. No. 63-1 at 5-6. The Ninth Circuit concluded that, without those
 16 findings, it did not have "a basis for fairly estimating the value of the relief to the
 17 class." *Id.* at 6. The Ninth Circuit vacated the order and judgment approving the
 18 settlement and remanded to the Court to make the *Bluetooth* factual findings.

19 **3. The 2015 Settlement Discussions**

20 Following the 2015 Ninth Circuit Ruling, the Parties entered into renewed
 21 settlement discussions to determine whether the Actions could be resolved in
 22 accordance with the Ninth Circuit's ruling, particularly in light of the passage of time
 23 since the 2012 Proposed Settlement Agreement. The subsequent arm's-length
 24 negotiations spanned more than four months and ultimately resulted in the Settlement
 25 Agreement. Stoia Decl., ¶3. The Settlement was reached only after multiple
 26

27 ⁴ Notices of Appeal were also filed by Chris Brown, Maggie Strohlein and
 28 Andrea Pridham, but those appeals were dismissed by the Ninth Circuit for failure
 to file opening briefs. Dkt. Nos. 7, 139.

1 settlement proposals had been exchanged and rejected. *See id.* The Settlement
 2 reflects careful consideration by the Parties of the benefits, burdens, and risks of
 3 continued litigation and addresses the issues raised in the 2015 Ninth Circuit Ruling.

4 **III. TERMS OF THE SETTLEMENT**

5 The complete terms of the Settlement are set forth in the concurrently filed
 6 Settlement Agreement, which is attached along with the exhibits, as Exhibit 1 to the
 7 Stoia Declaration, and are summarized below.

8 **A. The Settlement Class**

9 The Settlement Agreement defines the Settlement Class to include all Persons
 10 who purchased or received one or more Groupon Vouchers for redemption at a
 11 Merchant in the United States, from November 2008 until December 1, 2011. Stoia
 12 Decl., Exhibit 1, ¶39. Excluded from the Settlement Class are Defendants, Merchant
 13 Partners, their parent companies, subsidiaries, affiliates, officers and directors, any
 14 entity in which Defendants have a controlling interest, Groupon employees, and all
 15 judges assigned to hear any aspect of this litigation, as well as immediate family
 16 members of any of the preceding referenced individuals. *Id.* The Settlement Class
 17 remains unchanged from the 2012 Proposed Settlement Agreement.

18 **B. The Settlement Relief**

19 In consideration for the Settlement Class's release of claims (*id.*, §II.F),
 20 Defendants have agreed to pay a total of \$8,500,000 worth of (i) Groupon Credits to
 21 be paid into the Groupon accounts of Settlement Class Members ("Settlement
 22 Amount"); and (ii) Claims Administration Expenses, including costs of the Notice
 23 Program, and Attorneys' Fees and Expenses and Class Representative Awards.

24 The Settlement Agreement provides direct and valuable economic relief to
 25 Settlement Class Members who hold unredeemed and unrefunded Groupon Vouchers
 26 showing an "expiration date" that has passed. Settlement Class Members who submit
 27 a timely and valid Claim, or who already submitted a valid claim under the 2012

28 ////

1 Proposed Settlement Agreement,⁵ based on a Voucher that was not subsequently
 2 redeemed or refunded will be entitled to receive Groupon Credits equal to **130%** of
 3 the Customer Purchase Price of their original, unredeemed, unrefunded Groupon
 4 Voucher(s), with one dollar equivalent to one Groupon Credit. The amount of
 5 Groupon Credits issued to Settlement Class Members will be adjusted *pro rata*, based
 6 on whether the total dollar amount of the valid Claims submitted is more or less than
 7 the Settlement Amount, after Claims Administration Expenses and Attorneys' Fees
 8 and Expenses and Class Representative Awards, if any, have been paid. *Id.*,
 9 §II.D.2(g). Once the Claim Administrator has reviewed and approved the validly-
 10 submitted Claims and determined any *pro rata* upward or downward adjustment,
 11 Groupon will deposit the appropriate number of Groupon Credits directly into
 12 claimants' Groupon accounts.

13 Class Members may use their Groupon Credits to make a wide variety of
 14 purchases on the Groupon website, including for any Groupon Voucher redeemable at
 15 any Merchant, or for Groupon Goods offered by Groupon, subject to certain
 16 limitations in Groupon's system (not specific to this Settlement).⁶ *Id.*, §II.D.2(f).
 17 Groupon Vouchers purchased using Groupon Credits shall be fully transferrable,
 18 except for Groupon Vouchers that, by their nature, must be associated with a specific
 19 individual, promise a good or service customized for, or addressed to, a specific
 20 individual. *Id.* Class Members who receive Groupon Credits will have nine months
 21 from the date the Credits are deposited into their accounts to purchase Groupon

22 ⁵ Claims submitted by Settlement Class Members in the 2012 Proposed
 23 Settlement Agreement shall be deemed to have been timely submitted as if
 24 submitted under this Settlement, and shall be valid if they meet the criteria set forth
 25 in the claim form that was posted on the settlement website in connection with the
 26 2012 Proposed Settlement Agreement, provided, however, that no Claim shall be
 27 valid if based on a Groupon Voucher that has been previously redeemed or
 28 refunded at any time. *Id.*, §II.D.2. Furthermore, a Class Member may withdraw a
 previously submitted claim if he or she so desires. *Id.*, §II.E.7.

22 ⁶ Groupon Credits may not be used to purchase: (1) Groupon Getaways Market
 23 Rate Hotel Reservations; (2) merchant products offered as Groupon Goods;
 24 (3) Groupon-to-Go; (4) Groupon Link-Out offers; and (5) Groupon gift cards.

1 offerings.⁷ *Id.*

2 **C. Attorneys' Fees and Class Representative Awards**

3 Under the Settlement, Class Counsel may petition the Court for an award of
 4 Attorneys' Fees and Expenses not to exceed \$2,125,000, or 25% of the total
 5 Settlement Amount. *Id.*, §II.H.1. If awarded by the Court, such Attorneys' Fees and
 6 Expenses will be paid by Groupon by deposit into a joint escrow account set up by
 7 Groupon and Class Counsel within five days of entry of the Order and Judgment
 8 Approving Settlement. Any award of Attorneys' Fees and Expenses shall be paid
 9 from the Settlement Amount. *Id.*

10 Additionally, each Class Representative may be awarded no more than \$500,
 11 to be paid from the Settlement Amount *Id.*, §II.H.3. If awarded by the Court, such
 12 Class Representative Awards will be paid to Class Counsel on behalf of the Class
 13 Representatives within 30 days after the Effective Date from the Settlement Amount.
 14 *Id.* Both the Attorney's Fees and Expenses and Class Representative Award amounts
 15 are the same as the 2012 Proposed Settlement Agreement even though Class Counsel
 16 have incurred substantial fees and expenses pursuing Plaintiffs' claims since
 17 December 2012. *See Stoia Decl.*, ¶4.

18 **D. Release**

19 The release provision in the Settlement Agreement remains unchanged. Upon
 20 this Court's entry of the Approval Order and the Judgment Approving Settlement,
 21 each Releasing Party (the Settlement Class and related persons) shall be deemed to
 22 have released and forever discharged each Released Party (*i.e.*, Defendants, all

23

24 ⁷ In connection with the 2012 Proposed Settlement Agreement, Groupon had
 25 agreed to certain injunctive relief requiring Groupon to clearly set forth the
 26 expiration date of the promotional value on the face of the Groupon Vouchers and
 27 to state that the purchase value does not expire except in certain circumstances
 28 related to the time sensitivity of the offering. Groupon has since made those
 changes to Groupon Vouchers and, therefore, the injunctive relief provisions have
 been removed from the Settlement Agreement. Nevertheless, the Settlement
 Agreement acknowledges that Groupon's counsel worked extensively with Class
 Counsel with respect to the changes in light of the allegations in the Actions.

1 Merchants who offered promotions of goods or services or Vouchers through
 2 Groupon who were not named as Defendants, and related persons), of and from
 3 liability for any and all individual, class, representative, group or collective claim,
 4 liability, right, demand, suit, matter, obligation, damage, loss, action or cause of
 5 action, of every kind and description that a Releasing Party has or may have,
 6 including assigned claims, whether known or unknown, asserted or unasserted, that is,
 7 has been, or could reasonably have been asserted by the Releasing Party either in the
 8 Court or any other court or forum, regardless of legal theory or relief claimed, and
 9 regardless of the type of relief or amount of damages claimed, against any of the
 10 Released Parties arising from, or in any way relating to, any of the allegations in the
 11 Action, including but not limited to allegations regarding the advertising, marketing,
 12 redemption or sale of Groupon Vouchers alleged in the Actions, including allegations
 13 regarding any use of expiration dates on Groupon Vouchers, and regarding any other
 14 practice, conduct, or presentation of “Daily Deals,” “Fine Print,” “Legal Stuff We
 15 Have To Say,” “Not Valid For Cash Back,” other terms of use or terms of sale,
 16 disclaimers, arbitration provisions, allegations of improper time pressure placed on
 17 customers or requirements to use Groupon Vouchers in one visit, failures of
 18 disclosure, or any of the other allegations or claim raised in any of the Actions, or that
 19 could have been alleged based on the allegations raised in any of the Actions. *Id.*,
 20 §II.F.1.

21 In turn, the Released Parties agree to release Plaintiffs and all related persons
 22 for any claims arising out of the filing and settlement of the Actions. §II.F.1(c).

23 **E. Notice and Right to Opt Out**

24 Subject to this Court’s approval, Rust Consulting, Inc. will administer the Class
 25 Notice and claims filing, with costs being paid out of the Settlement Amount. *Id.*,
 26 §§II.C.1 and II.D.1. Potential Settlement Class Members will receive direct notice of
 27 the Settlement via email from a domain name that includes the word “Groupon” so
 28 that, to the extent possible, the email is recognized by the Settlement Class Members’

1 servers and not sent to their “junk mail” folders. *Id.*, §II.D.3. For the vast majority of
 2 Groupon subscribers, an email address is the only contact information Groupon
 3 possesses. Email is, therefore, the best practicable means by which Groupon can
 4 provide direct, uniform notice to the Settlement Class. The content of the email notice
 5 will be substantially in the same form as the one approved by the Court. *Id.*, §II.E.

6 All Settlement Class Members will also receive publication notice through a
 7 comprehensive, dedicated website. *Id.*, §II.D.5. The Claims Administrator will create
 8 a website with all the relevant documents, including the Class Notice; all applicable
 9 deadlines; the Class definition; instructions on how to submit Settlement Claims
 10 online or by e-mail, mail or facsimile; orders of the Court pertaining to this Settlement
 11 Agreement, including all supporting exhibits. *Id.* The website address will be
 12 provided in the Class Notice e-mailed to potential Settlement Class Members. Class
 13 Counsel shall also post the Class Notice on their website. *Id.*, §II.E.1.

14 Once the Court grants preliminary approval, the Claims Administrator will
 15 disseminate the Class Notice to Settlement Class Members within fifteen (15) days.
 16 *Id.*, §II.B.1(o)(i). And prior to the Approval Hearing, the Claims Administrator will
 17 provide the Court with documentation that the Class Notice was provided in
 18 accordance with the Court-ordered Notice Program. *Id.*, §II.E.4.

19 Finally, any Settlement Class Member who intends to object or opt out must do
 20 so at least 42 days before the Approval Hearing. *Id.*, §II.B.1(o)(iii).

21 **IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL
 22 OF THE SETTLEMENT AGREEMENT**

23 **A. Applicable Legal Standards**

24 Pursuant to Rule 23(e)(2), a class action settlement must be “fair, reasonable,
 25 and adequate.” Fed. R. Civ. P. 23(e)(2). Indeed, “[p]reliminary approval is
 26 appropriate ‘where the proposed settlement is neither illegal nor collusive and is
 27 within the range of possible approval.’” *In re Celera Corp. Sec. Litig.*, No. 5:10-CV-
 28 02604-EJD, 2015 U.S. Dist. LEXIS 42228, at *9 (N.D. Cal. Mar. 31, 2015) (quoting

1 William B. Rubenstein, 4 *Newberg on Class Actions*, §13:15 (5th ed. 2014)).
 2 “Relevant factors for the court to consider include: (1) the strength of the plaintiffs’
 3 case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the
 4 risk of maintaining class action status throughout the trial; (4) the amount offered in
 5 settlement; (5) the extent of discovery completed and the stage of the proceedings;
 6 (6) the experience and views of counsel; and (7) the absence of collusion between the
 7 parties.” *Celera*, 2015 U.S. Dist. LEXIS 42228, at *13. As the Ninth Circuit has
 8 recognized, “[t]his is by no means an exhaustive list of relevant considerations” and
 9 the “relative degree of importance to be attached to any particular factor will depend
 10 upon and be dictated by the nature of the claims advanced, the types of relief sought,
 11 and the unique facts and circumstances presented by each individual case.” *Officers*
 12 *for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982).

13 The Settlement Agreement readily meets these standards. As such, the Parties
 14 respectfully submit that the Settlement Agreement should be preliminarily approved
 15 so that notice can be provided to Class Members.

16 **B. The Strengths of Plaintiffs’ Case and Risks Inherent in
 17 Continued Litigation Favor Preliminary Approval**

18 “An important consideration in judging the reasonableness of a settlement is
 19 the strength of the plaintiffs’ case on the merits balanced against the amount offered in
 20 the settlement.” 5 James Wm. Moore, *Moore’s Federal Practice*, §23.85(2)(b) (3d.
 21 ed. 2002). In assessing the strength of this Action, the Court need not “reach any
 22 ultimate conclusions on the contested issues of fact and law which underlie the merits
 23 of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of
 24 wasteful and expensive litigation that induce consensual settlements.” *Officers for*
 25 *Justice*, 688 F.2d at 625

26 This Action faces challenges due to the mandatory arbitration provisions and
 27 class action waivers in each of Groupon’s consumer agreements. While Plaintiffs
 28 believe they have strong claims under the federal CARD Act, as well as under various

1 state consumer protection and gift certificate laws, there is a real risk that Plaintiffs
 2 and the Class would recover ***nothing*** if the litigation were to continue. As a threshold
 3 matter, Groupon contends that all of Plaintiffs' claims are subject to a mandatory
 4 individual arbitration provision and that Plaintiffs have waived the right to bring a
 5 class action. Groupon contends that, under federal law, courts are required to
 6 "rigorously enforce agreements to arbitrate" (*Dean Witter Reynolds, Inc. v. Byrd*, 470
 7 U.S. 213, 221 (1985)), and "any doubts concerning the scope of arbitrable issues
 8 should be resolved in favor of arbitration." *Moses H. Cone Mem'l Hosp. v. Mercury*
 9 *Constr. Corp.*, 460 U.S. 1, 24-25 (1983). Since these Actions were first filed, the
 10 United States Supreme Court has upheld the enforceability of a class action waiver in
 11 an arbitration agreement. *See CompuCredit Corp.*, 132 S. Ct. at 668-69 (citing *AT&T*
 12 *Mobility*, 131 S. Ct. at 1753). The Parties continue to disagree about the applicability
 13 and enforceability of Groupon's arbitration and class action waiver provisions, but
 14 nevertheless those provisions pose a risk to Plaintiffs.

15 Assuming that the litigation was to proceed and not be forced into arbitration,
 16 Plaintiffs would continue to face significant hurdles at the class certification stage and
 17 at trial. For example, Groupon argues that the applicable provisions of the CARD Act
 18 did not become effective until August 22, 2010, and therefore, asserts there was no
 19 federal legislation restricting expiration of gift cards for the class period prior to that
 20 date, assuming that Groupon Vouchers are governed by its provisions. In addition,
 21 Groupon argues that no class can be certified because Plaintiffs challenge millions of
 22 different Groupon deals, each of which involved different Merchants, different
 23 Customer Purchase Prices and Promotional Values, different expiration dates, and
 24 different deal-specific terms. If these Actions were to be tried, varying state laws may
 25 apply to different Groupon Vouchers depending on the state in which the Vouchers
 26 were purchased and Vouchers may be treated differently depending on state law.

27 Moreover, Groupon contends that circumstances surrounding each Plaintiff's
 28 purchase of Groupon Vouchers may present affirmative defenses that preclude

1 Plaintiffs' success at trial. For example, Defendants contend that Class Members
 2 have a duty to mitigate damages by attempting to redeem their "expired" Vouchers.
 3 *See Voeks v. Wal-Mart Stores, Inc.*, No. 07-C-0030, 2008 WL 89434, at *3 (E.D. Wis.
 4 Jan. 7, 2008) (finding that failure to mitigate is a permissible defense to an EFTA
 5 claim); *Farrell v. OpenTable, Inc.*, No. C 11-1785 SI, 2012 WL 1379661, at *3 (N.D.
 6 Cal. Jan. 30, 2012) (stating that, if plaintiffs prevailed, class members "who could not
 7 redeem or obtain a refund" could obtain damages). Groupon contends that no Class
 8 Members can claim damages until and unless the Merchant identified on the Voucher
 9 declines to honor the purchase value of a Voucher. And Groupon argues some
 10 Merchants, eager to have consumers sample their goods or services (the rationale
 11 behind their participation in Groupon offerings in the first place), would honor
 12 "expired" Vouchers for the Purchase Price Value.

13 Because of these risks, courts recognize that "[i]n most situations, unless the
 14 settlement is clearly inadequate, its acceptance and approval are preferable to lengthy
 15 and expensive litigation with uncertain results." *Me. State Ret. Sys. v. Countrywide*
 16 *Fin. Corp.*, No. 2:10-CV-00302 MRP (MANx), 2013 U.S. Dist. LEXIS 179190, at
 17 *55 (C.D. Cal. Dec. 5, 2013) (quoting 4 Alba Conte & Herbert Newberg, 4 *Newberg*
 18 *on Class Actions*, §11:50 at 155 (4th ed. 2002)). Accordingly, this factor supports this
 19 Court's preliminary approval of the Settlement.

20 **C. The Risk, Complexity, Expense, and Duration of the
 21 Litigation Favor Preliminary Approval**

22 In addition to the substantial risks and uncertainty inherent in continued
 23 litigation, the Parties face the *certainty* that further litigation would be expensive,
 24 complex, and time consuming. The Court would be required to resolve difficult and
 25 complicated issues of statutory interpretation and state law.

26 As other courts have acknowledged, "unless the settlement is clearly
 27 inadequate, its acceptance and approval are preferable to lengthy and expensive
 28 litigation with uncertain results." *Nat'l Rural Telecomms. Coop. v. Directv, Inc.*, 221

1 F.R.D. 523, 526 (C.D. Cal. 2004) (quoting *Newberg on Class Actions*, §11:50 at 155).
 2 Settlement is encouraged in class actions where possible: “It hardly seems necessary
 3 to point out that there is an overriding public interest in settling and quieting litigation.
 4 This is particularly true in class action suits which are now an ever increasing burden
 5 to so many federal courts and which frequently present serious problems of
 6 management and expense.” *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th
 7 Cir. 1976); *accord Molski v. Gleich*, 318 F.3d 937, 953 (9th Cir. 2003).

8 Here, the Parties anticipate the need for complicated litigation on a number of
 9 issues, including whether the claims can be litigated or are subject to an arbitration
 10 clause, and whether the Actions could proceed as a class. Assuming the Court
 11 determined that Plaintiffs have not waived their ability to maintain a class action and
 12 that their claims are not subject to arbitration, extensive discovery on class
 13 certification and the merits of Plaintiffs’ claims and Groupon’s defenses would be
 14 required. Continued litigation would be expensive, complex, and time consuming for
 15 all the Parties in the Actions. For those reasons, preliminary approval of the
 16 Settlement Agreement is appropriate.

17 **D. The Substantial Relief Provided by the Settlement Agreement
 18 Favors Preliminary Approval**

19 In evaluating the fairness of the consideration offered in settlement, it is not the
 20 role of the court to second-guess the negotiated resolution of the parties. “[T]he
 21 court’s intrusion upon what is otherwise a private, consensual agreement negotiated
 22 between the parties to a lawsuit must be limited to the extent necessary to reach a
 23 reasoned judgment that the agreement is not the product of fraud or overreaching by,
 24 or collusion between, the negotiating parties, and that the settlement, taken as a whole,
 25 is fair, reasonable and adequate to all concerned.” *Hanlon v. Chrysler Corp.*, 150
 26 F.3d 1011, 1027 (9th Cir. 1998) (quoting *Officers for Justice*, 688 F.2d at 626);
 27 *accord Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). The issue
 28 is not whether the settlement could have been better in some fashion, but whether it is

1 fair: “Settlement is the offspring of compromise; the question we address is not
 2 whether the final product could be prettier, smarter or snazzier, but whether it is fair,
 3 adequate and free from collusion.” *Hanlon*, 150 F.3d at 1027.

4 Here, the Settlement Agreement will provide substantial economic relief to the
 5 Settlement Class. Settlement Class Members who have already, or do by the
 6 deadline, submit a timely and valid Claim are entitled to receive Groupon Credits
 7 equal to **130%** of the Customer Purchase Price of their unredeemed and unrefunded
 8 Groupon Voucher(s), subject to any *pro rata* adjustment. These Groupon Credits
 9 may be used to purchase a wide variety of goods and services at various price points
 10 on groupon.com. The relief provided under the Settlement Agreement is more than
 11 adequate, particularly when viewed against the backdrop of the substantial legal
 12 obstacles Plaintiffs face.

13 Numerous federal courts have authorized and approved the type of class relief
 14 contemplated under the Settlement. Indeed, the Ninth Circuit very recently affirmed a
 15 district court’s approval of a class action settlement under which class members could
 16 submit a claim for settlement relief in the form of a \$12 gift card that could be used to
 17 purchase goods and products from Walmart’s website. *See In re Online DVD Rental*
 18 *Antitrust Litig.* (“Walmart”), 779 F.3d 934 (9th Cir. 2015). Rejecting arguments
 19 raised by objector Ted Frank and others, the Ninth Circuit affirmed the district court’s
 20 finding that such gift cards “do not constitute a coupon settlement that falls under the
 21 umbrella of CAFA [the Class Action Fairness Act].” *Id.* at 950. The Ninth Circuit
 22 reasoned that, instead of “merely offering class members the chance to receive a
 23 percentage discount” on a purchase, the gift cards provided real value to class
 24 members because they could be used to purchase “a large number of potential items”
 25 on walmart.com without requiring class members to “spend their own money.” *Id.* at
 26 951.

27 Consistent with the Ninth Circuit’s affirmance of the settlement in *Walmart*,
 28 this District routinely approves class action settlements involving the issuance of

1 credits or vouchers that can be redeemed for goods or services. *See Chaiken v.*
 2 *Lululemon*, No. 3:12-CV-02481-GPC-MDD, 2014 U.S. Dist. LEXIS 35258, at *7
 3 (S.D. Cal. Mar. 14, 2014) (Curiel, J., presiding) (approving class action settlement
 4 with \$25 “credit vouchers” at Lululemon stores that “require[d] no additional
 5 purchase”); *Foos v. Ann.*, No. 11cv3794 L (MDD), 2013 U.S. Dist. LEXIS 136918, at
 6 *7-*8 (S.D. Cal. Sept. 24, 2013) (Lorenz, J., presiding) (approving settlement
 7 allowing class members to receive, *inter alia*, a \$15.00 voucher for Ann Taylor
 8 merchandise with no minimum purchase required); *Morey v. Louis Vuitton N. Am.*
 9 *Inc.*, No. 11cv1517 WQH (BLM), 2014 U.S. Dist. LEXIS 3331, at *17 (S.D. Cal. Jan.
 10 10, 2014) (Hayes, J., presiding) (approving class action settlement providing class
 11 members with a \$41 “Merchandise Certificate” redeemable at Louis Vuitton retail
 12 stores).

13 As in *Walmart* and other settlements previously approved in this District, the
 14 Settlement Agreement provides real economic value to Settlement Class Members in
 15 the form of Groupon Credits that can be used to purchase a wide range of goods and
 16 services that consumers use for daily living on groupon.com, and without going out-
 17 of-pocket. The settlement relief offered under the Settlement Agreement is substantial
 18 and certainly within the range of reasonableness.

19 **E. The Stage of the Proceedings Favors Preliminary Approval;
 20 Experience and Views of Counsel**

21 As this Court is well aware, this litigation has been pending since 2011. Since
 22 that time, the Parties have: (1) engaged in formal and informal discovery;
 23 (2) conducted extensive, arm’s-length settlement negotiations under the supervision of
 24 the Honorable Daniel Weinstein (Ret.), which resulted in the 2012 Proposed
 25 Settlement Agreement; (3) extensively briefed and argued issues concerning the 2012
 26 Proposed Settlement Agreement for purposes of the preliminary and approval
 27 proceedings; (4) briefed and argued in the appellate proceedings and subsequent
 28 district court proceedings, following the 2015 Ninth Circuit Ruling; and (5) engaged

1 in renewed arm's-length settlement discussions during which the Parties directly
 2 addressed the issues raised in the 2015 Ninth Circuit Ruling, ultimately leading to the
 3 Settlement Agreement. Throughout these proceedings, the Parties have been able to
 4 assess the relative strengths and weaknesses of their respective positions, as well as
 5 compare the benefits of the Settlement Agreement to further litigation. Counsel, who
 6 have substantial experience in litigating class actions, and the Court are, therefore,
 7 adequately informed and in a good position to evaluate the fairness of the Settlement
 8 Agreement.

9 **F. The Settlement Was Reached after Months of Arm's-Length
 10 Negotiations, and There Was No Collusion**

11 The Parties' extensive arm's-length settlement negotiations, which spanned
 12 several months, further demonstrate the fairness of the Settlement Agreement that was
 13 reached, and show that the settlement is not a product of collusion. Counsel for
 14 Defendants and Plaintiffs each zealously negotiated on behalf of their clients' best
 15 interests and a settlement was reached only after multiple settlement proposals had
 16 been exchanged and rejected. *See* Stoia Decl., ¶3; Weiss Decl., ¶14.

17 **G. The Settlement Addresses the Concerns Raised By the Ninth
 18 Circuit in Its 2015 Ruling**

19 The Ninth Circuit in its 2015 Ruling was primarily concerned with what it
 20 perceived as a lack of *Bluetooth* factual findings relating to the Second Settlement
 21 Fund. Specifically, the Ninth Circuit found that there were no findings as to: (1) "the
 22 probable size, scope and impact of the Second Settlement Fund"; and (2) "whether the
 23 benefits of the Second Settlement Fund were in any way duplicative of preexisting
 24 relief available to class members via Groupon's customer satisfaction policy." Dkt.
 25 No. 63-1 at 5-6. According to the Ninth Circuit, the lack of such findings made it
 26 impossible to fairly estimate the value of the settlement of the Class. *Id.*

27 The Parties believe that the Settlement alleviates all of the Ninth Circuit's
 28 concerns by completely eliminating the Second Settlement Fund and any form of

1 secondary settlement relief. The relief provided in the Settlement Agreement would
 2 be unavailable absent the Settlement Agreement. Absent the Settlement Agreement,
 3 Class Members with unredeemed expired Groupon Vouchers have no right to receive
 4 Credits and no general right to a refund of the Purchase Price. Although Groupon
 5 prides itself on customer service and, under the “Groupon Promise,” pledges to
 6 address and attempt to resolve any customer dissatisfaction, which may *occasionally*
 7 involve giving a refund at Groupon’s discretion, Groupon makes no “money-back
 8 guarantee” through the Groupon Promise, or otherwise with respect to Groupon
 9 Vouchers. The “Groupon Promise” is fundamentally a customer satisfaction
 10 guarantee, and not a money-back guarantee. In fact, many of the Plaintiffs themselves
 11 maintain they were *unable* to get refunds for their Vouchers pursuant to the “Groupon
 12 Promise,” which is part of the reason they filed lawsuits. *See, e.g.*, Kimel Complaint,
 13 ¶43 (Dkt. No. 7-3, Ex. J); Christensen Complaint, ¶¶68-71 (Dkt. No. 7-3, Ex. L).
 14 Thus, the settlement is not “in any way duplicative of preexisting relief available to
 15 class members via Groupon’s customer satisfaction policy.” Dkt. No. 63-1 at 5-6.

16 Additionally, Groupon will not be able to seek reimbursement for the refunds it
 17 directly pays to Class Members. Under the Settlement Agreement, the full value of
 18 the \$8.5 million will be provided as Groupon Credits to Settlement Class Members,
 19 Claims Administration Costs, Attorneys’ Fees and Expenses and Class Representative
 20 Awards, and Groupon will not be able to seek reimbursement or a decrease in the
 21 Settlement Amount as a result of any past or future payment of direct refunds it might
 22 make to consumers for any reason.

23 The Settlement therefore establishes a single, simplified claims process, and
 24 those Class Members who previously submitted valid claims as part of the 2012
 25 Proposed Settlement Agreement will not have to resubmit those claims. Because the
 26 Settlement requires Class Members to submit their Claims for Groupon Credits within
 27 60 days after the issuance of the Class Notice, the Court will know, by the time of the
 28 Approval Hearing, the total number and value of the Claims submitted, and therefore

1 will be able to determine “the value of the relief to the class.” *See* Dkt. No. 63-1 at 6.
 2 Unlike the prior settlement, there is no additional settlement relief that the Court must
 3 quantify to determine the value of the settlement. *Id.* The Settlement, therefore,
 4 provides a simple and straightforward settlement framework that will allow the Court
 5 to make the requisite *Bluetooth* factual findings and determine the value of the
 6 settlement with a reasonable level of certainty, as required by the Ninth Circuit. *See*
 7 *id.* For this additional reason, the Court should find that the Settlement is within the
 8 range of reasonableness and that preliminary approval is warranted.⁸

9

10 **V. THE COURT SHOULD APPROVE THE PROPOSED NOTICE
PLAN**

11 Under Rule 23(e), the Court must “direct notice in a reasonable manner to all
 12 class members who would be bound” by the proposed settlement. Fed. R. Civ. P.
 13 23(e)(1). Purported class members must receive “the best notice that is practicable
 14 under the circumstances.” Fed. R. Civ. P. 23(c)(2)(B). “[B]est notice practicable”
 15 means “individual notice to all members who can be identified through reasonable
 16 effort.” *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156, 173-74 (1974) (citation
 17 omitted). If class members can be identified and are given individual notice, there is
 18 no requirement for notice by publication or other means. “[N]otice by publication is
 19 only used when the identity and location of class members cannot be determined
 20 through reasonable efforts” *In re Wal-Mart Stores, Inc. Wage and Hour Litig.*,
 21 No. 06-02069 SBA, 2008 WL 1990806, at *3 (N.D. Cal. May 5, 2008). The notice
 22 must describe “the terms of the settlement in sufficient detail to alert those with
 23 adverse viewpoints to investigate and to come forward and be heard.” *Rodriguez*,
 24 563 F.3d at 962 (“Notice is satisfactory if it “generally describes the terms of the
 25 settlement in sufficient detail to alert those with adverse viewpoints to investigate and

26 ⁸ Another factor that may be considered in determining whether preliminary
 27 approval is appropriate is “the risk of maintaining class action status throughout
 28 the trial.” *See Celera*, 2015 U.S. Dist. LEXIS 42228, at *13. Because this Action
 has not been certified for purposes of trial, this factor has no application here.

1 to come forward and be heard.”””) (quoting *Churchill Vill., LLC v. Gen. Elec.*, 361
 2 F.3d 566, 575 (9th Cir. 2004)).

3 Here, the Parties have agreed to a Notice Program to be administered by Rust
 4 Consulting, Inc. *See* Stoia Decl., Exhibit 1, §II.D.1. Upon Preliminary Approval of
 5 the Settlement, the Claims Administrator will disseminate the Class Notice to
 6 potential Settlement Class Members. Potential Settlement Class Members will
 7 receive direct notice of the Settlement via email from a domain name that includes the
 8 word “Groupon” to the address provided to Groupon at the time of subscription. *See*
 9 *id.*, §II.D.3. The content of the email notice will be substantially the same as the
 10 Court-approved notice. *See id.*, Exhibit 2. Publication notice will also be directed to
 11 all potential Settlement Class Members through a comprehensive, dedicated
 12 settlement website. *Id.*, Exhibit 1, §II.D.5. The website shall contain copies of all
 13 relevant documents and information, including: (1) the Class Notice, which contains
 14 instructions on how to submit a Claim Form, withdraw a claim previously submitted
 15 under the 2012 Proposed Settlement Agreement, opt-out from the Settlement, and
 16 object to the Settlement; (2) a copy of the Claim Form, (3) all applicable deadlines;
 17 (4) relevant pleadings and orders of the Court pertaining to the settlement; (5) FAQs
 18 and answers; and (6) addresses to contact the Claims Administrator by email and
 19 mail. *Id.*, §II.D.5. The website address will be provided in the email notice sent to
 20 potential Settlement Class Members. *Id.*, §II.E.5. Consumers may also discover and
 21 access the website via an Internet search. Class Counsel shall also post the Class
 22 Notice on their websites. *Id.* Prior to the Approval Hearing, the Claims Administrator
 23 shall provide to the Court documentation that the Class Notice was provided in
 24 accordance with the Notice Program. *Id.*, §II.E.4. Finally, Groupon will send notice
 25 of the Settlement by overnight mail to appropriate federal and state officials as
 26 required by the Class Action Fairness Act, 28 U.S.C. §1715(b), not later than ten days
 27 after this filing.

28 The Notice Program complies with Rule 23 and due process because, among

1 other things, it informs Settlement Class Members of: (1) the nature of the action;
 2 (2) the essential terms of the settlement, including the definition of the Settlement
 3 Class and claims asserted; (3) the binding effect of a judgment if the Settlement Class
 4 Member does not request exclusion; (4) the process for objection and/or exclusion,
 5 including the time and method for objecting or requesting exclusion and that
 6 Settlement Class Members may make an appearance through counsel; (5) information
 7 regarding the named plaintiffs' request for an incentive award and reimbursement of
 8 their attorneys' fees and costs; (6) the procedure for submitting Claims to receive
 9 settlement benefits; and (7) how to contact Class Counsel to make inquiries. Fed. R.
 10 Civ. P. 23(c)(2)(B); *Manual for Complex Litigation*, §21.312; *see also Skilstaf, Inc. v.*
 11 *CVS Caremark Corp.*, No. 10-15338, 2012 WL 400369 (9th Cir. Feb. 9, 2012)
 12 (enforcement of judgment and settlement agreement in related action against plaintiff
 13 did not violate plaintiff's due process rights where plaintiff who was a party to the
 14 prior suit and was provided full notice of the release and covenant not to sue
 15 provisions of the settlement agreement and rejected opt-out opportunity).

16 This Notice Program ensures that Settlement Class Members' due process
 17 rights are protected and is the best notice practicable. *See* Fed. R. Civ. P. 23(c)(2)(A).
 18 The same type of notice has been approved by courts as the best notice practicable
 19 under similar circumstances. *See Browning v. Yahoo! Inc.*, No. C04-01463 HRL,
 20 2006 WL 3826714, at *8-*9 (N.D. Cal. Dec. 27, 2006) (finding notice by email
 21 directing class members to official settlement website particularly appropriate where
 22 class members' "allegations arise from their visits to Defendants' Internet websites,
 23 demonstrating that the Settlement Class Members are familiar with and comfortable
 24 with email and the Internet"); *Wal-Mart Stores, Inc.*, 2008 WL 1990806, at *3
 25 (identity and location of class members determined through defendant's electronic
 26 records); *In re Diet Drugs Prods. Liab. Litig.*, 226 F.R.D. 498, 520 (E.D. Pa. 2005)
 27 (holding individualized notice plus Internet publication "fulfilled the 'best notice
 28 practicable' requirement of Rule 23(c)(2)"); *In re Lupron Mktg. & Sales Prac. Litig.*,

1 228 F.R.D. 75, 85 (D. Mass. 2005) (noting effectiveness of settlement website as
2 means of publication).

3 **VI. SCHEDULING AN APPROVAL HEARING IS APPROPRIATE**

4 The last step in the settlement approval process is an Approval Hearing at
5 which the Court may hear all evidence and argument necessary to make its settlement
6 evaluation. Fed. R. Civ. P. 23(e)(2); *UAW v. Gen. Motors Corp.*, 235 F.R.D. 383, 387
7 (E.D. Mich. 2006). There, the Parties will demonstrate the class notice provided and
8 offer argument in support of approval. In addition, any Settlement Class Member(s)
9 who properly and timely object to the settlement may be heard. The Court will
10 determine after the Approval Hearing whether the Settlement Agreement should be
11 approved, and whether to enter a judgment and order of dismissal under Rule 23(e).

12 In order to accommodate the steps that must occur following entry of the
13 Court's Preliminary Approval Order but prior to the approval hearing (such as Class
14 Notice, the claims deadline, the objection and opt out deadline, and the briefing on the
15 Parties' motion for approval of settlement and plaintiffs' attorneys' fees and costs
16 motion), the Parties respectfully request that the Court set a date for the hearing on
17 approval to occur no less than 117 days after the Court's entry of the Preliminary
18 Approval Order.

19 **VII. CONCLUSION**

20 For the reasons set forth above, the Parties respectfully request that the Court
21 enter the proposed Preliminary Approval Order submitted herewith.

22 DATED: September 11, 2015

Respectfully submitted,

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25 JOHN J. STOIA, JR.
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Class Counsel

DATED: September 11, 2015

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1 **CF CERTIFICATION**

2 The filing attorney attests that she has obtained concurrence regarding the filing
3 of this document from the signatories to this document.

4 Dated: September 11, 2015

5

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6 SHIRLI F. WEISS

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